

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5259 OF 2005

Smt. Leena Sandeep Sawant.
Petitioner.

...

Vs.

State of Maharashtra & Ors.

...Respondents.

....

Mr. Vikram Pai for the Petitioner.

Mrs. M.P. Thakur, AGP for the Respondents.

.....

**CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.**

February 8, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

The father-in-law of the Petitioner was in the service of the State Government. He retired on superannuation on 31st July 1989. After his retirement, the Petitioner's husband came to be employed in the office of the Superintendent of Stamps, General Stamp Office, as a Sepoy in a Class IV post with effect from 6th May 1992. The Petitioner's father-in-law had been allotted government quarters in the Government Colony at Bandra. Under a Government Resolution of 10th September 1996, a retiring Government servant and the members of his family were allowed to retain service accommodation for a period of three months on a

concessional rent after which, it has been stated in the affidavit in reply, the occupant is liable to pay penal rent at the rate of Rs.10/- per sq.ft. On 6th May 1992, the Petitioner's husband came to be appointed as a Peon in the service of the State Government. It has been stated in the reply that under the Rules governing transfer of government quarters from the name of a retired Government servant to a member of his family who was also in Government service, a minimum of three years' of continuous service was required. This period has been reduced to one year by a Government Circular dated 1st January 2000. The Petitioner's husband applied for transfer of the Government quarters allotted to his father to himself. On 4th February 2003 and 26th August 2004, the General Administration Department of the State called upon the Petitioner's husband to complete certain formalities for transfer. The Petitioner's husband, however, expired on 11th December 2004. Under Clause 3(b) of a Government Resolution dated 10th September 1996, after the demise of a Government employee if his or her family members do not obtain alternate accommodation within three months of the date of death, a maximum period of nine months is allowed (including the period of the initial three months) with the permission of the Chief Secretary to vacate the premises.

It appears from the record that after the death of her husband, the Petitioner also applied for compassionate appointment on or about 4th January 2005. These proceedings came to be initiated upon notice dated 22nd July 2005 issued by the Competent Authority calling upon the Petitioner to vacate the official accommodation. Apart from challenging the eviction notice, the Petitioner has also sought (i) A consideration of her case for compassionate appointment in a Class IV post; and (ii) A direction for the release of the terminal dues and death-cum-retirement gratuity due and payable to her husband.

2. In so far as the question of compassionate appointment is concerned, it has been stated in the affidavit filed by the Respondents in these proceedings on 18th October 2005 that the case of the Petitioner for appointment will be duly considered in accordance with law. At the hearing of the petition, Counsel appearing on behalf of the Petitioner sought some time to vacate in order to enable the Petitioner to make alternative arrangements for residential accommodation.

3. By our interim order dated 24th October 2005, we had

called upon the Respondents to submit a chart working out the dues for accommodation in the following manner:

“(i) From 1st August 1989 to 4th June 1992 in terms of the Rules as applicable.

-(ii) From 5th June 1992 till his death on 12th December 2004 as if the premises were allotted to him;

-(iii) Consequently to work out the further dues from 13th December 2004 for a period of 9 months at the same rate.”

4. In pursuance of the aforesaid order, an affidavit has been filed by Shri S. M. Dhadwe, Section officer, General Administration Department, clarifying that the dues would be as follows :

i) From 1 st August, 1989 to 4 th June, 1992 in terms of the Rules as applicable.	From 1 st August, 89 to 31 st October 89 Rs.195/- as concessional rent as per Government Resolution Ghabhav 1489/40-SER-5, dt. 30.12.1991 and from dt. 1.11.1989 to dt. 4.6.1992 Rs. 35,336/- @ Rs.5/- per sq.ft. per month as penal rent as per Government letter No.Shaniva 25/2001/CM-2/CR 281/01/23-A, dt. 25.6.2001.
ii) From 5 th June, 1992 till his death on 12 th December, 2004 as if the premises were allotted to him.	Nil. (As the accommodation to Class IV employees is provided rent free as per B. C. S. R. Volume -I Rule No.850 (Appendix 55).
iii) Consequently to work out the further dues from 13 th December, 2004 for a period of 9 months at the same rate.	From 13 th Dec., 2004 to 12 th Mar, 05 Rs.390/- as concessional rent as per Government Resolution Ghabhav 2000/C.R 97/2000-SER-5, dt. 17.2.2001 and from dt. 13.3.2005 to dt. 12.9.2005 Rs.13,620/- @ Rs.10/- per sq.ft. per month as penal rent as per Government Resolution No.Shaniva 1095/CR 807/95/23-A, dt. 10.9.1996.
	{Total Rs.(i + iii) = 49,541/-}

5. It is undisputed that the Petitioner's husband, who was appointed on 6th May 1992 was eligible for the allotment of Government accommodation. In fact, as is evident from the affidavit filed by the State, necessary formalities were required to be completed by the Petitioner's late husband for transfer of the

premises which had been allotted to his father by this Government to his name but he expired before this could be done. In the circumstances, for the period 1st August 1989 to 4th June 1992 and for the period 5th June 1992 till 12th December 2004, the computation of the arrears of rent shall be in terms of what is stated in paragraph 3 of the affidavit dated 14th December 2005 filed in this Court by the Respondents. Similarly, for a period of nine months from 13th December 2004, until 12th September 2005 the arrears have been computed in sub para iii of para 3 of the affidavit. The total arrears work out to Rs.49,541/-. We are of the view that the ends of justice would be met if for the period after 13th September 2005, until 31st May 2006 (which is the time which we grant for vacating the accommodation) arrears should be computed on the basis of the G.R. dated 10th September 1996 and at the same rate as applicable for the period 13th May 2005 to 12th September 2005.

6. In the circumstances, we dispose of this petition with the following directions :

-(i) The Petitioner is granted time to vacate the premises

until 31st May 2006, subject to the filing of an undertaking in this Court within a period of four weeks from today by the Petitioner and her dependent sister that vacant and peaceful possession shall be handed over on or before the aforesaid date;

-(ii) For the past, until 12th September 2005, the arrears are computed at Rs.49,541/- as stated in paragraph 3 of the Affidavit in Reply;

-(iii) For the period from 13th September 2005 until 31st May 2006, we direct that rent shall be computed at the same rate as applicable in Clause (iii) of para 3 of the affidavit filed by the State, namely for the period 13th March 2005 to 12th September 2005, on the basis of the GR dated 10th September 1996;

-(iv) The State Government shall pay to the Petitioner all the terminal dues that are due and payable on account of the service of her late husband after deducting the arrears of rent as aforesaid, within a period of two weeks from the Petitioner handing over vacant and peaceful possession of the premises; and

-(v) The case of the Petitioner for compassionate employment shall be duly considered in accordance with law.

7. The petition is accordingly disposed of. There shall be no order as to costs.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)